

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 v.) No. 19 CR 00567-1
6 ROBERT SYLVESTER KELLY,) Chicago, Illinois
7 Defendant.) July 16, 2019
) 1:02 p.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE HARRY D. LEINENWEBER

10 || APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE COURT: Good afternoon.

3 THE CLERK: Good afternoon, Judge.

4 19 CR 567, United States versus Kelly.

5 THE COURT: Good afternoon.

6 MS. KRULL: Good afternoon, your Honor. Angel Krull,
7 Abigail Peluso, and Jeannice Appenteng on behalf of the United
8 States.

9 MR. GREENBERG: Good morning, your Honor. Steve
10 Greenberg, Mike Leonard, and Chris Grohman -- who promises
11 he's going to electronically file his appearance today --

12 THE COURT: All right.

13 MR. GREENBERG: -- on behalf of Mr. Kelly who's
14 present.

15 PRETRIAL SERVICES OFFICER: Good afternoon, your
16 Honor. Jeffrey Arias on behalf of Pretrial Services.

17 THE COURT: Okay. This is the defendant's petition
18 for bond.

19 MR. GREENBERG: Yes.

20 THE COURT: Okay. The government has -- I've
21 received the pretrial services report. I think I have two of
22 them, one for the New York case and one for this case. And
23 it's my understanding, we've consolidated the matter for
24 hearing today. Is that correct?

25 MS. KRULL: Yes, your Honor.

1 MR. GREENBERG: Yes, your Honor.

2 THE COURT: And it's my understanding that -- further
3 that the government contends that some of the counts require
4 the presumption of -- there are no conditions, which would
5 then make the burden on the defendant.

6 Do you agree with that, Mr. Greenberg?

7 MR. GREENBERG: I agree that some of the counts do,
8 yes.

9 THE COURT: And how do you wish to proceed? If
10 you -- let me ask this. Does the government intend to call
11 live witnesses, or are you going to proffer, or what?

12 MS. KRULL: We do not intend to call live witnesses.
13 We intend to proceed by proffer and a joint presentation on
14 both cases.

15 THE COURT: All right. And do defendants intend to
16 provide -- call any witnesses?

17 MR. GREENBERG: No, your Honor. We're going to rely
18 on the recommendations of the pretrial services report and
19 argument.

20 THE COURT: Okay. And so the government then would
21 proceed then.

22 MS. KRULL: Thank you, your Honor.

23 MR. GREENBERG: Your Honor, do you want us to stay
24 here or --

25 THE COURT: Well, probably seat --

1 MR. GREENBERG: Thank you.

2 THE COURT: A proffer is not quite the same as
3 testimony.

4 MR. GREENBERG: Right. But I'm guessing it will be
5 lengthy.

6 THE COURT: So there won't be cross-examination. Let
7 me ask this. How long do you think the proceeding will take?

8 MS. KRULL: Your Honor, my argument is less than a
9 half an hour long.

10 THE COURT: All right.

11 MR. GREENBERG: I'll be seated.

12 THE COURT: Very good.

13 MR. GREENBERG: Thank you.

14 MS. KRULL: Thank you, your Honor.

15 THE COURT: Ms. Krull, you may proceed.

16 MS. KRULL: The defendant, Robert Sylvester Kelly,
17 should be detained pending his trial because, first, he is an
18 extreme danger to the community, especially to minor girls.
19 Second, he poses a serious risk of obstruction of justice in
20 his current case which also makes him a danger to the
21 community. And third, he poses a serious risk of flight now
22 that he's facing more serious charges with mandatory prison
23 time.

24 In this case, as you noted, your Honor, detention is
25 presumed under the Bail Reform Act because the defendant is

1 charged with producing child pornography, among other things.
2 So detention, your Honor, is our starting point, and it's the
3 defendant's burden to rebut that presumption of detention,
4 which it simply cannot do.

5 The defendant here is charged with incredibly serious
6 crimes involving the sexual abuse of young teen girls, some as
7 young as being in middle school at the time. Middle school.
8 We're talking seventh and eighth-grade girls. And it didn't
9 happen once or twice. He sexually abused them hundreds of
10 times before they turned 18.

11 And that's just two of the victims. Between the
12 Illinois state court charges, the case in the Eastern District
13 of New York, and the case right here in the Northern District
14 of Illinois, there are 12 unique victims identified in those
15 cases, and the vast majority of them are minors.

16 And that's just the tip of the iceberg. Our
17 investigation has identified many more girls who were sexually
18 abused by the defendant, and our investigation is far from
19 over. The evidence against the defendant is overwhelming. It
20 includes hard evidence, direct evidence in the form of three
21 videos showing this man, Robert Kelly, sexually abusing a
22 young girl who was only 14 years old at the time.

23 These videos are extremely disturbing to watch, and
24 they show defendant's sadomasochistic abuse of a 14-year-old
25 girl. These videos also show defendant's particular sexual

1 interest in young girls because he repeatedly tells the girl
2 to refer to her body parts, specifically her genitalia, as
3 being only 14 years old. And he does so in such a way that
4 shows his sexual interest to girls that particular age. The
5 girls' age is repeated at least 15 times on this video, these
6 videos, including by the defendant's own mouth. Also on these
7 videos, the defendant makes the girl call him "daddy" over and
8 over again.

9 And there is no question that it is the defendant on
10 these videos. There are extreme close-ups of the defendant's
11 face on these videos. Two of the videos are filmed in very
12 distinctive rooms at his former home. And the victim in all
13 three of these videos, she herself has testified under oath
14 that it was Robert Kelly in all three videos sexually abusing
15 her when she was 14 years old. There are at least five
16 witnesses who will corroborate that victim.

17 That evidence is overwhelming, your Honor. The
18 defendant repeatedly sexually abused a 14-year-old girl. He
19 filmed it, and we have the videos to prove it. That weighs in
20 favor of detention.

21 But that's not all, your Honor. In addition to the
22 sexual abuse of at least five minors, several victims reported
23 defendant's physical abuse in addition to the sexual abuse:
24 Hitting, slapping, punching, and spanking. And beyond the
25 physical harm, there's the psychological harm that also must

1 be considered in determining whether the defendant is a danger
2 to the community.

3 Both the Illinois and the New York indictments list
4 examples of the defendant's manipulative and controlling
5 behaviors that impose lasting harm to the victims in cases
6 like this. And that's particularly so when the defendant is
7 not in custody, because these victims fear him. All of this
8 makes the defendant a further danger to the community.

9 But what sets this case apart from so many others and
10 what makes the defendant even more of a danger to the
11 community is the defendant's extensive history of obstruction
12 of justice -- the threats, the intimidation, the witness
13 tampering, the hush money payments -- all outlined in Count 5
14 of the indictment.

15 And these just -- these aren't just mere arguments
16 from a prosecutor. This is what the defendant is actually
17 charged with. A grand jury found probable cause that the
18 defendant obstructed justice in all of those ways. This risk
19 of obstruction is real. This risk is ongoing. And this risk
20 of obstruction is heightened by the defendant's fame and power
21 which emboldens him to give a -- and gives him a unique
22 ability to influence and intimidate witnesses and victims, and
23 that continues to this day.

24 Now, I expect the defense will argue that the
25 defendant should be released because this conduct is old and

1 dates back to the 1990s. First, that's factually just not
2 true. Count 5 of the indictment, the conspiracy to obstruct
3 justice, that count alleges conduct right up to the present
4 day. And the New York indictment includes conduct in 2015
5 against a minor and in 2018 against an adult victim. So it's
6 just wrong to say that these cases deal only with old conduct.

7 But second, and perhaps more importantly, so what?
8 There is no statute of limitations for producing child
9 pornography and enticing a minor to engage in sexual activity.
10 If the defendant was sexually attracted to middle-school
11 girls, to eighth-grade girls in 1999, then he is still
12 attracted to middle-school girls and eighth-grade girls right
13 here in the present. He sexually assaulted those girls
14 hundreds of times.

15 Being sexually attracted to young girls is not
16 something that you can just turn on and turn off like a light
17 switch. It hasn't just magically gone away. It's who the
18 defendant is. It's what he's been doing for most of his adult
19 life and that, your Honor, makes him a danger today.

20 The defendant's team has also argued that these new
21 federal charges in Illinois and in New York are just for the
22 same conduct that the defendant was acquitted of in 2008.
23 Again, not true. There are 13 counts in the Illinois
24 indictment and five counts in the New York indictment. That's
25 18 total counts. Only one of those 18 total counts is the

1 same as his state court trial in 2008. That means that the
2 defendant is facing 17 new criminal counts that he has never
3 faced before.

4 And what about that one count that does overlap with
5 the old state case? That's Count 1 of the Illinois
6 indictment. The United States Department of Justice very
7 deliberately charged Count 1 of the indictment even though the
8 defendant was acquitted of state charges based on the same
9 conduct, and that's because the defendant obstructed justice
10 and he ensured that the state trial was not a fair trial. He
11 threatened and he intimidated Minor One's family and other
12 witnesses. He provided hush money payments, and he
13 manipulated and controlled minor victims into lying about
14 their abuse.

15 Charging this conduct in the Illinois indictment
16 sends a message that no one is above the law, not even a
17 famous musician with lots of money and power.

18 Now, the defendant will say that he's not a flight
19 risk because he has showed up to all of his court hearings in
20 the past, but the stakes have significantly changed. He is
21 now for the very first time facing a mandatory minimum of 10
22 years' imprisonment and up to a maximum of 195 years on the
23 Illinois indictment alone. On top of that, New York has a
24 possible sentence of up to 80 years. And that changes
25 everything.

1 And before last Thursday, the defendant faced only
2 the same court system at the same courthouse where he
3 illegally obtained an acquittal by obstructing justice, and he
4 likely thought that he would do it again. Now he has federal
5 charges. He had little incentive to flee then. Now he does.
6 The very obstruction of justice that saved him last time is
7 charged in this new indictment. And so he knows it won't work
8 this time because this time, his victims are cooperating with
9 law enforcement. And that, your Honor, is his incentive to
10 flee.

11 There are no release conditions that can mitigate
12 these dangers. Electronic monitoring and home incarceration
13 are just insufficient here. Electronic monitoring does
14 nothing about the obstruction of justice. It does nothing to
15 prevent witness tampering. Defendant could easily obstruct
16 justice from the comfort of his own home even if he has an
17 ankle bracelet, but not so from the MCC where his
18 communications will be monitored.

19 And on top of that, the defendant can entice girls to
20 his own doorstep. He doesn't have to leave his home to do
21 that, especially when he has assistants and other workers who
22 enable him as alleged in the New York racketeering charge. So
23 electronic monitoring and home incarceration are insufficient
24 to protect the public, to protect the victims, and to protect
25 witnesses from defendant's obstruction of justice.

1 Finally, your Honor, the defendant has already shown
2 his intention to disrespect this court by not being fully
3 upfront with Pretrial Services. When Pretrial Services asked
4 him about his prior marriages, defendant conveniently left out
5 his very first marriage in 1994, and that's because that
6 marriage was to a minor girl who was only 15 years old at the
7 time and the defendant was 27 years old. That marriage
8 happened right here in the Northern District of Illinois, and
9 the defendant knew that the girl was only 15 years old when he
10 married her.

11 Defendant was not upfront and truthful with Pretrial
12 Services during his interview. Defendant mentioned only his
13 second marriage, and he conveniently left out that first
14 marriage because it incriminates him. He could have simply --
15 he could have simply declined to answer that question if he
16 didn't want to disclose it but instead, he chose to lie and
17 only talk about his second marriage.

18 MR. GREENBERG: Judge, I'm sorry. I don't mean to
19 interrupt, but I'm going to object to that. And maybe I'll be
20 a witness. He did decline to answer the question. I was
21 there.

22 THE COURT: That, I don't know. The record will
23 be --

24 MR. GREENBERG: I --

25 THE COURT: Okay. You've established the record.

1 Whether that's true or not, I don't know.

2 MS. KRULL: All I know, your Honor, is that's not
3 reported in the pretrial services report that the government
4 received that it was a declination to talk about his first
5 marriage.

6 Your Honor, the defendant is a danger to the
7 community. He is a risk of flight. And he poses a serious
8 risk of obstruction of justice. For all of the reasons that
9 I've just laid out, the government respectfully requests that
10 this Court detain the defendant pending his trial here in the
11 Northern District of Illinois and then also for any transport
12 to New York to face the charges there. Thank you.

13 THE COURT: Is New York going to make a presentation
14 of its own?

15 MS. KRULL: No, your Honor. They are not.

16 THE COURT: Okay. So your presentation covers both
17 so --

18 MS. KRULL: Correct.

19 THE COURT: Mr. Greenberg?

20 MR. GREENBERG: Thank you, your Honor. Your Honor,
21 first of all, I just do want to address the pretrial services
22 report. I sat in on the interview the other day, which is not
23 something that we typically, I guess, do. But as I indicated,
24 in response when they asked about marriage, he declined to
25 answer certain questions at my suggestion.

1 Beyond that, Judge, Mr. Kelly is 52 years old. He's
2 been a lifelong resident essentially of Illinois except for
3 brief stints in other jurisdictions. He lived in Miami when
4 he was recording an album for a time. He lived in Atlanta for
5 a couple of years.

6 He lives here with two young ladies. In the media,
7 they've referred to these ladies as -- somehow as hostages or
8 slaves or whatever. They move freely about. They live their
9 lives. It may not be how -- you or I or some other people may
10 not choose to live with two girlfriends at the same time.
11 That's how they choose to live. And, in fact, they're here in
12 court today to support him. They're back here in the first
13 row, your Honor. So they're certainly not hostages. They're
14 certainly not being held kidnapped.

15 And that's sort of how this started. Late last year
16 when the father of one of them was claiming that he couldn't
17 see his daughter, we set up numerous meetings since I've been
18 involved with Mr. Kelly, and they've never shown up for those
19 meetings.

20 He has children. He's estranged from his children,
21 his children who live here. Even though he's estranged from
22 his children, he pays child support every month. At one
23 point, Judge, he's -- he fell behind on child support. He got
24 jailed until he came up with the money. He came up with the
25 money. He paid the child support. His child support is

1 current and being paid. Even though he doesn't see his kids,
2 even though his career is not what it was, he's still paying
3 that.

4 He doesn't travel. In connection with the Illinois
5 proceedings, I turned in his passport. I looked at the
6 passport before I turned it in. It was seven or eight years
7 old. It didn't have a single stamp in it. He hadn't been
8 anywhere, hadn't been anywhere, hasn't traveled around the
9 United States for the last years.

10 Every once in a while, he goes to play a concert
11 somewhere, and he'll travel to the concert. And unlike -- and
12 I've said this before. Unlike the song, his most famous song
13 which is, "I Believe I Can Fly," Mr. Kelly doesn't fly. He
14 doesn't like to fly. He drives to concerts unless it's
15 somewhere he can't fly to.

16 So, for instance, if he has a concert in California,
17 he may have to take a plane. He gets medicated. He goes on
18 the flight. That's one of the reasons he never travels to do
19 concerts internationally because he doesn't like to fly. He's
20 got a van. He travels in his van. So he's not a risk to go
21 to the airport and take off. And frankly, he would be
22 recognized anyway. He's not going anywhere.

23 He has no family or friends that reside outside the
24 United States. He has no contact with people under 18. No
25 one under 18 lives with him. No one under 18 lives around

1 him.

2 And they had to ask questions about internet and so
3 forth. He has internet. He records on a computer. And he
4 records -- obviously, you have to use the internet to do
5 anything with the computer. And right now, your Honor, he
6 lives in a small -- it's essentially a one-bedroom, I think
7 they call it, plus den unit in Trump Tower on the 48th floor;
8 a secure building, obviously.

9 He lives there, and he records there. He's taken the
10 den. He's got some computer equipment in there, and with
11 today's technology you can make a guitar and he can make
12 keyboards and all of that, and that's what he does. And he
13 basically stays in that unit unless he's walking his dog or
14 going outside as he likes to do from time to time and smoking
15 a cigar. He has no criminal record. And I'll get into the
16 earlier case in a minute. But he has no criminal record.

17 These are the third and fourth cases that Mr. Kelly
18 has been charged with of real substance. Actually, they're
19 the fourth and fifth. He got charged with a case in Florida
20 that was dismissed back when the other charges were pending
21 here in Illinois back in 2002-2003.

22 He had a case from 2002 to 2008. It was pending in
23 state court here in Illinois. There were dozens of court
24 dates, dozens upon dozens of court dates. He was required to
25 appear, the best I've been able to determine, at each of those

1 court dates. He appeared each of those court dates. He was
2 facing extraordinarily serious charges at that time, your
3 Honor.

4 The prosecutors maybe want to look down on the state
5 court or the integrity of the state court proceedings. Those
6 were extraordinarily serious. They were child pornography
7 charges. He was facing, by my reading of the charges,
8 possible consecutive time. And he went to trial on over 10
9 charges. He was looking at significant, significant jail
10 time. And he went to trial. He had to go to trial.

11 I keep hearing this, you know, from the prosecution,
12 and I see what they've done in their indictment. Obviously,
13 I'm not privy to the evidence at this point, but they say that
14 the case was somehow rigged. He went to trial. He wasn't, if
15 it was -- he didn't take a bench trial. He had a jury. He
16 didn't -- no one says he paid off the jurors or anything. He
17 had 12 people. Those 12 people watched the video in that
18 case. The video in that case got played, the same video
19 they're talking about here.

20 The witness in that case that they've got here
21 testified before the grand jury, her parents testified before
22 the grand jury back then that that wasn't her. The jury heard
23 all the evidence. The jury heard from other people. And the
24 jury watched the video. And the jury acquitted Mr. Kelly. If
25 the fix was in, he went through an awful lot because the fix

1 was in. He was definitely at jeopardy in that case.

2 Now, I don't know what their evidence is. I don't
3 know what people who maybe knew Mr. Kelly was. He had fine
4 attorneys. He had the Sam Adam, Junior and Senior. He had
5 Mr. Genson on the case. I don't know what they're saying was
6 going on with that case because I haven't seen it. But
7 Mr. Kelly had to go to trial. He had to face those jurors.
8 He had to sit through a closing argument and a rebuttal
9 closing argument where someone pointed their finger at him and
10 said, "Based on the evidence here, we think you're guilty."

11 They thought that they had presented enough evidence.
12 If they had such problems with their evidence on that case,
13 they wouldn't have gone to trial, the prosecutors. And I've
14 talked to those prosecutors about that case. They certainly
15 never suspected that anything was untoward in that case. He
16 never missed a court date, never was late for a court date.

17 Charged again here in Illinois this year. And again,
18 they pooh-poohed those charges. He's charged with Class X
19 felonies here in Illinois and, again, facing potential
20 consecutive time on Class X felonies. He showed up for court.
21 The State indicted him. The State called me up, they said,
22 "We're going to add charges on the case. When do you want to
23 come to court and be arraigned?"

24 We picked a date. He showed up. He showed up on
25 time. He pled not guilty to those charges, and the State

1 didn't even ask the judge to raise the bond on the case
2 because there's no reason to believe that he is not going to
3 show up.

4 On the state case, Judge, he posted \$100,000. They
5 had 25,000 he had to post, a \$250,000 D bond on each of the
6 four cases. So it's \$100,000 total that's posted on that
7 case. He's being monitored by pretrial services in the state
8 court. They've never had a problem. They check on him. He
9 does what he's supposed to do. They tell him to call, he
10 calls when he's supposed to call. They tell him where to be,
11 he's where he has to be. There's not any problem there.

12 The fact that Mr. Kelly was getting charged in state
13 court was no surprise to anyone. It was -- there was this, as
14 they like to call it, documentary. I don't really think it
15 was a documentary, but they call it that. And he gets
16 charged. He turns himself in. They called me up. They said,
17 "Hey, we charged" -- this is original, not on the increased
18 charges, the original charges. They called me up. "We
19 charged him with felonies. We'll give him 24 hours to turn
20 himself in."

21 We made arrangements, went to the police station,
22 went to the police station, turned himself in, cooperated with
23 them. They wanted to take a DNA sample. Sure, take the DNA
24 sample, all that.

25 He did that knowing that when I talked to the

1 prosecutors about bond, they would not agree to a bond with
2 me. So he did that full well knowing that he could be held
3 without bond on the state charges. And had they called me on
4 this -- and they knew I was representing him. Had they called
5 me on this, they wouldn't have had to pull up and arrest him
6 walking his dog outside of Trump Tower. If they would have
7 said, "Bring him in," we would have brought him in just like
8 before.

9 They argue that he's a flight risk when every single
10 time, every single time, he has voluntarily appeared. He
11 hasn't fled. He hasn't missed court. He hasn't been late for
12 court.

13 It was no secret he was under investigation here,
14 Judge. It's been common knowledge he's under investigation
15 here. He's under investigation in the Eastern District of New
16 York. There may even be a second investigation in the
17 Southern District of New York that I've heard about. It's a
18 well-known fact.

19 If Mr. Kelly was going to flee, he would have left
20 then. He would have already left. He's not a flight risk at
21 all. And I'm shocked that they even argue that, that they
22 would even argue that. When they pulled up to arrest him on
23 Wabash, he didn't try and run. He texted me shortly before.
24 He saw the cars out there. I can show the government the text
25 message. He saw the cars out -- that were out there, your

1 Honor. He didn't go back into Trump Tower. He didn't go lock
2 himself -- he stood there smoking a cigar and walking his dog.
3 He was polite. He was cooperative. There was absolutely no
4 reason to believe that he would flee.

5 How could he flee? He has no money. Mr. Kelly filed
6 for bankruptcy four, five years ago. He doesn't, to the best
7 of what I've been able to determine, own the royalties to his
8 songs. Those were stolen from him. He would get small checks
9 from time to time because, my understanding -- I've learned a
10 little about the business now in this case -- they don't make
11 money from selling the music anymore because you can go on a
12 streaming service, and the streaming service charges a small
13 monthly fee. So the money's in concerts. And he doesn't play
14 any concerts these days. He hasn't played any concerts for a
15 while.

16 So every once in a while, he'll get a check. It
17 might be 30,000, 40,000. I think he got one that was a little
18 bit bigger than that for royalty payments. He got a check
19 when Sony, I think it was Sony canceled his contract. There
20 was an agreement as to how much it was. That money is gone.

21 What did he do with that money? He didn't put the
22 money when he got it -- he got almost \$400,000 right around
23 the time of the state charges, I think right after the state
24 charges. He didn't put that money in a safe in his house or
25 in a hidden box somewhere. He put that money in a bank

1 account under his own name. And what happened? He had gotten
2 evicted from his recording studio, and the people who evicted
3 him seized the money in his bank account. And a big chunk of
4 it went to pay because he owed back child support, so he paid
5 it to back child support. And some of it went to pay his
6 state court bond. And then there was nothing left.

7 He prepaid his apartment. I believe it's paid for
8 close to either until December or to January 1st in Trump
9 Tower. He's prepaid that. And he has no other money to live
10 on. He's got no money to flee on. He'll get a little check
11 here and a little check there, and maybe some friends will
12 help him.

13 They say that he lives a lavish lifestyle, but he
14 doesn't live a lavish lifestyle. They say that he faces a
15 mandatory minimum sentence of ten years now so he's in some
16 grave danger. He was facing a mandatory minimum sentence of
17 six years before, and he was showing up. I don't see that as
18 a sea change in what he's facing.

19 They claim, your Honor, that Mr. Kelly is a danger to
20 minors. The way the indictment is written is very typical.
21 It's vague as to what things are. And I understand why they
22 write the indictments that way, but the dates are in there.
23 So except for one allegation which I can't figure out what
24 they're really saying in it, the allegations date back to the
25 '90s, to the '90s.

1 Now, I understand statutes of limitations and all of
2 that, but they date back to the '90s. They've been
3 investigating him, state. They've been investigating him,
4 federal. They've gone on TV and said, "Call us if you've had
5 a problem with R. Kelly."

6 They've gone on TV, other people, not the law
7 enforcement, have said, you know, "We'll pay you for your
8 story if something has happened with R. Kelly," yet we're
9 still dating back two decades on allegations regarding minors
10 except for one very vague thing that they've put in one of the
11 indictments.

12 There's no evidence that he's a risk to minors at all
13 at this point. And they talk about the psychological risk or
14 something like that. I don't -- I don't know what that is,
15 but whatever it is, detaining Mr. Kelly isn't going to fix
16 someone if someone's got some kind of psychological issues
17 because of something happening to them. Those aren't
18 connected at all. In fact, the only proof here is that he
19 isn't a danger to minors. The fact that it's been two decades
20 since there were these allegations shows that he isn't.

21 They say that he's a danger because he's going to
22 obstruct justice in this case just like he did before. And I
23 don't have whatever their evidence is, but I can tell you a
24 little bit. And these are not secrets. This is well known
25 about Mr. Kelly and Mr. Kelly's business. Mr. Kelly had a

1 business manager. He had a lawyer. He had an accountant. He
2 had people who worked for him, other people working for him,
3 all of whom have a lot of money now. All of them have a lot
4 of money now, but Mr. Kelly doesn't. He doesn't have any
5 money.

6 It's not a secret that Mr. Kelly doesn't read. He
7 doesn't write. Now, if other people did something when he was
8 facing trial before because they wanted to protect, you know,
9 the money tree, I don't know about that, and I haven't seen
10 the evidence on that, but he wasn't doing it. He wasn't doing
11 it. And let me tell you why, even if the government says he's
12 a danger because of the obstruction charges, why their
13 argument impeaches itself.

14 He's charged in that count with two other people:
15 Derrel McDavid -- and everyone has always told me Derrel
16 McDavid was the guy who ran it, he was the business guy; he
17 was the accountant, but he was the business guy, he was the
18 guy who handled all Mr. Kelly's affairs -- and a guy named
19 June Brown.

20 The government agreed to recognizance bonds for
21 Derrel McDavid and June Brown. June Brown, I think, turned
22 himself in in Las Vegas. My understanding is, he got a
23 recognizance bond. Derrel McDavid turned himself in here and
24 got a recognizance bond, but he's charged with obstruction.
25 If obstruction is such a danger and such a risk to everybody,

1 then why did the government agree to a recognizance bond for
2 Derrel McDavid? And I'm sure they've got -- they've got their
3 reasons, but it certainly shows that that charge doesn't imply
4 that anyone's a danger.

5 Frankly, Mr. Kelly -- well, there's no evidence, your
6 Honor, at this point and there's no evidence because it hasn't
7 happened that since Mr. Kelly has heard these rumors swirling
8 around which have been around now for probably a year and a
9 half, two years about criminal charges and so forth, that he's
10 done anything to any witness, to anyone he thinks might be a
11 witness, taken any action at all.

12 There's no suggestion that since the state court
13 charges were filed that Mr. Kelly has done anything wrong at
14 all, anything. Hasn't talked to a witness. Hasn't interfered
15 with a witness. And I don't even think that was a condition
16 of his state court bond. I might be -- was that a condition,
17 Steve, that he not have contact with anyone? Was it a
18 condition?

19 Okay. It's a condition of his bond, that he's
20 complied with that. But he complied with it before it was a
21 condition of his bond. He didn't do anything.

22 Now, they say that all of this is different and all
23 of it is different charges, different victims and all that.
24 We respectfully disagree, your Honor. We think that there is
25 great overlap. And we think that some of the case is, in

1 fact, overreaching. For instance, where they've got predicate
2 acts in a RICO prosecution because you could have transmitted
3 a sexually transmitted disease in violation of state law,
4 they're making it into a RICO case. I know they've got other
5 allegations, but they've got things like that in their case.

6 We think that it's terrible overreaching. We think
7 that they're trying to criticize how consenting adults,
8 consenting adults who never complained for years and years all
9 of a sudden say, "Oh, no, I didn't want to be in that kind of
10 a relationship. There was something about that relationship."

11 These people who are their witnesses have been on a
12 greatest hits tour since this first hit. They've been on TV.
13 They went to the awards in Las Vegas, the MTV awards, and got
14 an award for the documentary. They went to some other award
15 show and they -- we've got this, they Tweet and they video and
16 they, "Oh, this is great. My mom has never been" -- the one
17 girl who is charged, she's one of the people in the state
18 case. "My mommy's never been to anything like this. I'm so
19 happy I got to bring my mother to this." I mean, give me a
20 break. That's what this has turned into.

21 They've got in here that he was forcing people to do
22 labor. I have no idea what they're talking about. Was he
23 forcing a girl to collect tickets? Was he forcing her to
24 record? What is it? It's so vague, we can't -- we can't
25 respond, we can't attack it, but we're going to attack it.

1 Mr. Kelly's conditions, Judge, another factor I think
2 the Court can take into consideration, he is in the SHU, which
3 is the special housing unit. He's in the SHU because,
4 frankly, for the MCC or any other institution, Mr. Kelly is a
5 difficult prisoner to have there because of other prisoners;
6 not because of anything Mr. Kelly is going to do but because
7 of his notoriety.

8 Mr. Kelly -- there's going to be an enormous amount
9 of discovery in this case. He can't read and he can't write.
10 Someone's going to have to sit down with him hour after hour
11 after hour, day after day, and go through the discovery.
12 That's virtually impossible to do if he's in custody.

13 In the SHU, he gets 15 minutes a week to speak on the
14 phone, not like other inmates. There's no dayroom. There's
15 no television because that's normally the hole. That's where
16 they take people who are in trouble. There's no television
17 there. And he can't read, so there's no books to read.
18 There's no anything. So he literally sits there in isolation
19 all day long.

20 And if we go to meet with him, the attorneys on the
21 case, we went over there yesterday. What would you guys say?
22 The room is six by eight?

23 Probably a six-foot by eight-foot room, and we'll all
24 crammed in there. That's the room that we have to meet with
25 him, and they have to shut everything else down while we do

1 it. They have to shut everything else down while we do it.
2 Now, whatever you may think of the charges, whatever the
3 government may think or the public may think of the charges,
4 the man's going to have to prepare for trial, and the man's
5 entitled to be held in a humane situation.

6 We have reviewed all of the conditions listed in the
7 pretrial services report. He doesn't have a passport. That's
8 been taken by the State. We have no objection to any of the
9 conditions that are listed in the report. And we believe that
10 it's perfectly appropriate in this case that he should be
11 allowed to return home, whether it's on electronic monitoring
12 or home detention or whatever the -- I know there's various
13 levels of federal detention when you're kept at home, but that
14 that is, in fact, appropriate, commensurate with the
15 presumption of innocence and the proper bail that should be
16 set in this case.

17 May I have one moment, Judge?

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. GREENBERG: And Mr. Grohman has pointed out to me
21 also that they executed a search warrant on Mr. Kelly's
22 residence after he was arrested. I believe that I read
23 somewhere they found two bullets, I think, which were in a cup
24 with change. He had weapons. Those were all turned in to the
25 State when he was arrested on the state charges. Those were

1 probably buried under the change. But they found nothing that
2 I'm aware of during that search.

3 THE COURT: Thank you.

4 MR. GREENBERG: Thank you.

5 THE COURT: Ms. Krull?

6 MS. KRULL: Thank you, your Honor. I just briefly
7 want to address a couple of the things raised by
8 Mr. Greenberg. First of all, Mr. Greenberg raised the fact
9 that Mr. Kelly's co-defendants were released on bond. And
10 yes, that is true, and here's why.

11 There are zero allegations against Mr. McDavid and
12 Mr. Brown that they have ever sexually abused a minor. They
13 are not charged in the most serious counts in this indictment,
14 and they are not charged with counts that carry that
15 presumption of detention.

16 And second of all, with respect to the charges
17 relating to the obstruction of justice, Mr. Kelly was the
18 leader of that conspiracy to obstruct justice. And whatever
19 his co-defendants did in furtherance of that obstruction of
20 justice they did at his behalf.

21 And I want to make clear, with respect to the count
22 of receiving child pornography, that conspiracy to receive
23 child pornography that both McDavid and Mr. Brown is charged
24 in, their role in receiving that child pornography was not
25 because they enjoyed viewing child pornography. It was

1 because the defendant instructed them to obtain these sex
2 tapes with minors that the defendant was on. And so it's not
3 like they had an interest in minors. They were doing what the
4 defendant told them to do. That's why they're charged in that
5 count. And so we did not seek detention for those individuals
6 because we did not see them as the extreme danger to minors
7 that the defendant is.

8 The other thing I'd like to mention, your Honor, is
9 that throughout Mr. Greenberg's presentation here, he never
10 once mentioned Minor One. He never once mentioned the
11 strength of our evidence regarding Mr. Kelly's sexual interest
12 in middle-school kids. He never once mentioned that she has
13 now gone on record that, yes, that is her on three videos.

14 And I want to emphasize, it's not just the same video
15 from 2008. We have three videos showing the defendant
16 sexually abusing Minor One. And the other two videos were not
17 part of that 2008 trial. So these charges are much more
18 severe than what he was facing before.

19 And the other thing I'd like to say, Mr. --
20 Mr. Greenberg liked to focus on a lot of the adult victims in
21 the case, and he was not focusing on the minors. And I'd like
22 to make clear that the eighth-graders that I mentioned
23 including Minor One, never have they appeared before a TV
24 camera. Never have they been seeking fame and fortune. They
25 have cooperated with the United States government because we

1 reached out to them. They are not on TV seeking money from
2 the defendant.

3 That's all, your Honor.

4 THE COURT: Anything further?

5 MR. GREENBERG: No, your Honor.

6 THE COURT: All right. Under the law, the charge,
7 the specific charge of child pornography, creating and
8 possessing child pornography, does require a presumption of
9 detention that there are no conditions that would be
10 sufficient. And it would be up to the defendant to
11 demonstrate that there -- to get away from this presumption.

12 And I do not believe based on the allegations that
13 have -- of the indictment which bear the imprimatur of the
14 grand jury, which means that the grand jury, after hearing
15 evidence certainly produced by the government, found probable
16 cause for guilt of all of the specific counts in both the
17 indictment here in Chicago and the indictment in -- from New
18 York, in the Eastern District of New York.

19 The charges are extraordinarily serious. The one
20 specific one, Count 1, 2, and 3, carry a mandatory ten-year
21 penalty which is a very, very -- which indicates how serious
22 those specific charges are and, in addition, they carry the
23 detention presumption.

24 The -- as far as the obstruction of justice,
25 according to the specific count in the indictment that the

1 acquittal was at least in some part obtained because of
2 obstruction of justice which involved allegedly paying off of
3 witnesses and threatening witnesses and buying back certain
4 evidence in the forms of the videos that even though
5 apparently there was one that was played, there were several
6 other videos. And if all three videos or four videos, one of
7 which apparently has not surfaced yet but must be out there
8 somewhere, had all three of them, who knows how the case could
9 have come out.

10 Supposedly, according to the indictment -- again, I
11 go by the fact that a grand jury found that there's probable
12 cause -- that witnesses were paid and witnesses were
13 threatened in order to either change testimony or not appear
14 at all.

15 So it appears to me that the defendant has failed to
16 overcome the presumption of requiring detention in both the
17 case here in Chicago and the case in New York.

18 Although, does the presumption apply in the New York
19 case?

20 MS. KRULL: Yes, it does, your Honor.

21 THE COURT: All right. So the presumption in both
22 cases, that there are no conditions that will assure the
23 defendant's attendance at trial and no conditions that will
24 protect the public and certain individuals, accordingly, the
25 Court denies the motion for bond. Thank you.

1 MS. KRULL: Your Honor, I believe that we also have
2 to take care of the defendant's arraignment. He was unable to
3 be arraigned the very first day that he was arrested.

4 THE COURT: All right. Mr. Greenberg, has the
5 defendant received a copy of the indictment?

6 MR. GREENBERG: He has, your Honor.

7 THE COURT: Have -- you've advised that he can't read
8 it, but have you read it to him?

9 MR. GREENBERG: We've gone over the charges with him,
10 yes. We'll enter pleas of not guilty, and we'll waive formal
11 reading.

12 THE COURT: All right. Would the government put on
13 the record the maximum penalties?

14 MS. KRULL: Yes, your Honor. For Counts 1 through 4
15 of the indictment, the maximum possible penalties are 20
16 years' imprisonment with a mandatory minimum of ten years;
17 supervised release of not more than five years; a fine of up
18 to \$250,000; and a special assessment of \$100 along with
19 restitution.

20 With respect to Count 5, the conspiracy to obstruct
21 justice, the maximum term of imprisonment is five years;
22 supervised release of not more than three years; a fine of up
23 to \$250,000; and a special assessment of \$100.

24 With respect to Count 6, conspiracy to receive child
25 pornography, and also Counts 7 and 8, the actual receipt of

1 child pornography, there's a mandatory minimum of five years'
2 imprisonment on each of those counts; a statutory maximum
3 sentence of 20 years on each count; supervised release of at
4 least five years and up to lifetime supervised release; a fine
5 of up to \$250,000; and a special assessment of \$100.

6 And finally, with respect to Counts 9 through 13,
7 enticement of minors to engage in criminal sexual activity,
8 there's a statutory maximum of ten years' imprisonment on each
9 count; up to five years of supervised release; a fine of up to
10 \$250,000; a special assessment of \$100; and also restitution.

11 THE COURT: He's been arraigned on the New York
12 charges already?

13 MS. KRULL: Yes, he has.

14 THE COURT: All right. Mr. Kelly, your attorney -- I
15 understand that he tells me that you cannot read. And so do
16 you feel that you understand the nature of the charges of the
17 indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. All right. The Court accepts
20 the -- let the record show that the defendant is in court in
21 person through his counsels. The government's present through
22 its counsel. The defendant acknowledges that he has received
23 a copy of the indictment, that it has been read to him, that
24 he is familiar with the contents of the indictment, and he
25 waives the -- excuse me. He pleads to all of the counts not

1 guilty.

2 The rule -- as far as discovery is concerned, the
3 government will proceed immediately to furnish discovery; is
4 that correct?

5 MS. KRULL: Your Honor, we were going to ask for some
6 time to be able to work out a protective order with all three
7 defendants because a lot of the materials that we'll be
8 producing involve minors. And we are working on a protective
9 order before we produce anything. So we would like maybe an
10 extension of a week to your normal schedule for the Rule 16
11 conference.

12 THE COURT: Is that acceptable?

13 MR. GREENBERG: I don't know what -- what a week
14 means. Give me a day that they're talking about.

15 THE COURT: Are you talking about two weeks for the
16 production?

17 MS. KRULL: Right. Normally, we get two weeks to
18 produce the Rule 16 materials. We're asking for an extra week
19 because Mr. Brown's not even in town yet. We're not sure of
20 his attorney situation, and we'd like to produce -- to work
21 out this protective order with all three defendants in the
22 case before we produce anything.

23 THE COURT: So you want three weeks to produce?

24 MS. KRULL: Correct.

25 MR. GREENBERG: Judge, given that Mr. Kelly is going

1 to be in custody, we -- you know, we can look over whatever
2 they propose as a protective order, and it will be binding on
3 us. And if they want to work out another protective order --
4 I mean, what happens if Mr. Brown gets here and says he needs
5 time to find counsel. I don't want to be at Mr. Brown, who is
6 out, his leisure.

7 THE COURT: Well, we're talking about three weeks
8 max. Now, if they can't work out a protective order, he
9 doesn't get counsel in time, they will proceed with
10 discovery --

11 MS. KRULL: Correct.

12 THE COURT: -- within -- after three weeks even
13 though they have not. So they would have to do it piecemeal,
14 I guess, to -- is that acceptable, I guess the question is?

15 MR. GREENBERG: I'm not trying to be difficult --

16 THE COURT: No, I --

17 MR. GREENBERG: -- but how difficult is it to do a
18 protective order? The protective order is going to say, don't
19 show it to anyone other than the lawyers --

20 THE COURT: I don't know.

21 MR. GREENBERG: -- and people working on the case.

22 THE COURT: I don't know.

23 MR. GREENBERG: It seems pretty simple. I would
24 think they've got one on their word processor.

25 THE COURT: Normally, you'd think it might be simple,

1 but then I've been here long enough to know that it isn't --
2 that isn't always the case, that people come up with
3 objections.

4 I guess I repeat the question: You object to three
5 weeks?

6 MR. GREENBERG: I do.

7 THE COURT: All right. I'll make it two weeks.

8 Let's see. What else do we need to do? Discovery in
9 two weeks. Do you wish to file pretrial motions?

10 MR. GREENBERG: I'm sure we will.

11 THE COURT: How much time? Would you like to do it
12 now, or do you want to look at them and then we can have a --

13 MR. GREENBERG: I'd like to look at the discovery.

14 THE COURT: All right. Why don't we do this. We'll
15 come back in 30 days, and we'll set a schedule for motions.

16 And is there objection to excluding time?

17 MR. GREENBERG: No, your Honor.

18 THE COURT: All right. To the next status, will be
19 30 days after you get the discovery.

20 THE CLERK: September 4th at 10:00 o'clock a.m.

21 THE COURT: September 4th. The time will be excluded
22 without objection to September 4th for the purpose of the
23 interest of justice and for the -- in the interest of justice
24 and for pretrial motions which counsel advises that there
25 definitely will be. So okay, without objection, time will be

1 so excluded.

2 MS. KRULL: Thank you.

3 THE COURT: September 4th at 9:00 o'clock.

4 MR. GREENBERG: Thank you.

5 THE COURT: Anything --

6 MR. GREENBERG: What about --

7 MS. KRULL: Your Honor, I imagine that New York is
8 going to want to have an arraignment in New York on their
9 charges.

10 THE COURT: Hasn't he been arraigned? I thought you
11 said he --

12 MS. KRULL: I misspoke earlier. He had his initial
13 appearance on the removal proceedings, but he needs to be
14 arraigned before --

15 THE COURT: Oh.

16 MS. KRULL: -- the district judge there.

17 And so I do believe, though, September 4th should
18 give us enough time for him to have his appearance there and
19 be brought back to Chicago for your September 4th date. I'll
20 work with the marshals on that to make sure that that's okay.

21 THE COURT: All right.

22 MS. KRULL: But it sounds like it should be enough
23 time to get him to New York and back.

24 MR. GREENBERG: Which is a whole another
25 complication, Judge.

1 THE COURT: Are you representing him in the New York
2 case?

3 MR. GREENBERG: We very well may be, but he does --
4 he has a lawyer there.

5 THE COURT: Does he have one there?

6 MR. GREENBERG: Right. Because we're not -- I'm not
7 licensed --

8 THE COURT: All right. Well --

9 MS. KRULL: We can also talk about videoconferencing
10 with New York to see if that is a possibility.

11 THE COURT: All right. Work that out.

12 MR. GREENBERG: Can we -- we can't arraign him here
13 now? We've reviewed those charges with him, also, but --

14 THE COURT: I don't know.

15 MS. KRULL: He's entitled to appear before the
16 district judge there.

17 THE COURT: Well, is that a waiveable?

18 MS. KRULL: I can work on that to see if that's
19 acceptable to the judge in New York and the prosecutors in New
20 York.

21 THE COURT: All right. If you want to do -- arraign
22 him in front of me on the New York charges, then just schedule
23 it with the clerk, and we can do that.

24 MS. KRULL: Thank you, Judge. I'll work on that.

25 MR. GREENBERG: Thank you.

1 THE COURT: Anything further?

2 MR. GREENBERG: No, your Honor.

3 MS. KRULL: No, your Honor.

4 THE COURT: All right. We'll stand adjourned.

THE CLERK: All rise.

6 (Proceedings adjourned at 1:56 p.m.)

7 || * * * * *

C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable HARRY D. LEINENWEBER, one of the judges of said Court, at Chicago, Illinois, on July 16, 2019.

15 || /s/ *Judith A. Walsh, CSR, RDR, CRR*

July 20, 2019

16 | Official Court Reporter

17 || United States District Court

18 || Northern District of Illinois

19 || Eastern Division

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